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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,523	11/02/2001	Mark Freier	3401-125	4169

7590 01/03/2006

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EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/002,523

Applicant(s)

FREIER ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Oct. 28, 2005 has been entered.

Claims 8 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salerno (4,953,559) in view of Falk et al. (4,569,131). Salerno discloses hollow shank 1, scoop 2 which defines a spoon-shaped trough having an opening (at the top of the trough) and a closed end (at the left or bottom of the trough) handling means (at the proximal end of shank 1) having an actuation mechanism 28, actuating rod 15 and covering 4, 5 comprising a tongue (member 4, 5 is a "tongue" since it is flat, planar, wide and long in a such that its shape is similar to the human body part of a tongue along most of its length, i.e., along portion 5), a position of the tongue being adjustable between a closure position and an open position (as it pivots), the position of the tongue being adjustable along a longitudinal length of the tongue (since the position of the tongue is adjustable along its entire longitudinal length as it

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pivots,)), the position of the tongue being maintained without external force on the actuating rod. Salerno fails to disclose the actuating rod being releasably connectable with actuation mechanism. However, Falk et al. teach that the actuation rod 8 of a surgical instrument should be detachable from the actuation mechanism 3 apparently in order to obtain the advantage of enabling the parts to be detached to better sterilize them or to replace them when a part becomes defective. It would have been obvious to make the connection between the actuating rod and the actuation mechanism of the Salerno instrument releasable so that it too would have these advantages. As to claims 11 and 18, Salerno discloses a holding-down device (the pivot pin 9 upon which the covering 4, 5 pivots) which holds the covering 4, 5 onto the rest of the instrument and which guides the covering and holds it closed since it holds the covering in position. As to claim 12, the edge is at an angle relative to a longitudinal axis of the hollow shank 2 such that a retrograde inclination is exhibited by the edge of the scoop when the flexible catheter 1 is bent in the body or in the embodiment described in col. 4, lines 26-31. As to claim 13, the covering 4, 5 is inherently bendable to some extent since it is thin. As to claims 15 and 16, the volume defined by the scoop is separated from a volume defined by the hollow shank. As to claim 17, covering 4, 5

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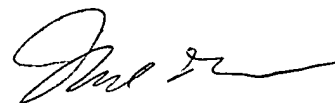
comprises a thin strip. It is, in fact, axially displaced as it pivots since it moves to the left as it pivots closed. Further, it is displaced "along the longitudinal length thereof" since the entire longitudinal length of the covering is displaced as it pivots. As to claim 19, Salerno discloses sleeve 27, external ring 28, inner ring (the eyelet referred to in col. 4, line 11) and fastening bar 31.

Applicant's arguments filed Oct. 28, 2005 have been fully considered but they are not persuasive for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht  
12/27/05



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731